

CQ-09-22



DEPARTMENT OF FORESTRY AND FIRE PROTECTION

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August 18, 2009

Christopher Calfee, Special Counsel
California Resources Agency
1017 L Street, #2223
Sacramento, CA 95814

RE: CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Dear Mr. Calfee:

The California Department of Forestry and Fire Protection (CAL FIRE) has reviewed the proposed amendments to the CEQA Guidelines prepared in accordance with Public Resources Code Section 21083.05 requiring the Natural Resources Agency to adopt and certify guidelines for the mitigation of Greenhouse Gas (GHG) emissions. CAL FIRE submits the following comments in the areas of: Forest Land Conversion; Fire Protection; Trustee Agency; and Miscellaneous comments.

FORESTLAND CONVERSION AND GHG EMISSIONS

CAL FIRE supports amending to the CEQA Guidelines, Appendix G, Agriculture Resources section to include a consideration for forestland and believes it will encourage recognition by lead agencies that their decisions to approve projects may have a significant impact on the State's forestlands and result in increased GHG emissions and lost sequestration capacity. However, it is CAL FIRE's opinion that these proposed amendments do not go far enough in identifying the actions that will ultimately result in the loss of forestlands.

CEQA encourages the consideration of environmental effects as early as possible in the project planning and approval process. Yet many agencies rezone and subdivide forestlands without any, or very limited, analysis and disclosure as to the impacts that may eventually arise as a result of their land use decisions. When no immediate change in use is proposed, some agencies rezone forestlands without giving consideration to the smaller parcel sizes and new permitted uses. Uses that conflict with maintaining productive forests and declining parcel sizes that make forest management impractical, contribute to an erosion of the State's forestland base. It is CAL FIRE's position that lead agencies should be considering the long-term, indirect and cumulative effects of their land use decisions. The proposed checklist questions do not get to the heart of the matter.

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For example, the proposed amendments addressing forest and timberlands read:

Would the project:

Conflict with existing zoning for, or cause rezoning of, forestland (as defined in Public Resources Code Section 12220(g)) or timberland (as defined by Public Resources Code Section 4526)?

Result in the loss of forestland or conversion of forestland to non-forest use?

Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forestland to non-forest use?

These checklist questions achieve, in part, a lead agency's obligation to disclose the potential impacts where rezoning and conversion of forestland is occurring. However, in those instances where there is no immediate plan to clear the land for development, lead agencies will likely check the "no impact" or "less than significant impact" box without considering that their decision to rezone will authorize, and may encourage, the conversion of those forested ecosystems at some later date. Because of this, there is a need to separate in the checklist those actions by lead agencies that result in immediate physical changes to forestlands from those that will likely result in physical changes at some time in the future. The physical changes occurring in the future are not speculative but, in fact, are reasonably foreseeable consequences of the decision to rezone forestland and thereby allow other uses. CAL FIRE suggests the following amendments to the Agriculture and Forest Resources section of the Checklist to better address forestland conversion issues.

Add to Appendix G, II. Agriculture and Forest Resources

Would the project:

Introduce, allow for or encourage new uses that conflict or interfere with, discourage or prohibit the existing primary forest use, through the rezoning or subdividing of, forestland (as defined in Public Resources Code Section 12220(g)) or timberland (as defined by Public Resources Code Section 4526) or timberland zoned Timberland Production (as defined by Government Code Section 51104(g)) in accordance with Government Code Sections 51120, 51133 or 51134?

Convert forestland or timberland to a non-forest/non-timberland use such that the subject property would no longer be forestland as defined by Public Resources Code Section 12220, (g) or no longer devoted to growing timber (ref. Public Resources Code Section 4621)?

Contribute to a change in land use or conditions that substantially decrease the ability to maintain or manage agricultural land or forestland as a working landscape?

Result in a cumulatively considerable decrease in the public benefits derived from, forestland or timberland, including, but not limited to: wood products and other forest

products; aesthetics; fish, wildlife and flora; biodiversity; water quality; recreation; or carbon sequestration?

Add to Appendix G, VII. Greenhouse Gas Emissions

Would the project:

c) Reduce the capacity of the land to reduce GHG levels by converting or removing trees and other vegetation that sequester CO₂.

FIRE PROTECTION AND GHG EMISSIONS

The Initial Statement of Reason (ISOR) states:

One large source of GHG emissions, for example, is wildfire on forestlands and rangelands, which release carbon as a result of material being burned. [ISOR, page 4]

Wildfire occurrence may be increased significantly where lead agencies approve development in wildland areas, thereby increasing the size and frequency of fires as well as GHG emissions. Introducing housing developments into forested or brush covered landscapes results in more frequent ignitions. In addition, controlling wildfires is complicated and substantially hindered when protecting structures and saving lives becomes the focus of firefighting efforts. It is also more difficult and costly to implement fuels treatments for the purpose of lessening fire severity and spread where housing developments are present. CAL FIRE believes that lead agencies considering the approval of development within wildland settings must give serious consideration to the potential hazards, and resultant emissions that may arise from that approval. Therefore, CAL FIRE proposes the following amendments.

Add to CEQA Guidelines Appendix G, Environmental Checklist, VIII Hazards:

- h) Would the project expose people or structures to a significant risk of loss, injury, or death involving wildland fires due to alterations in fire hazard severity and/or risk through changes in vegetation condition or land use that lessen defensible space, increase fuels, contribute to more frequent ignitions and complicate fire control operations and emergency evacuations where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

Trustee Agency and GHG Emissions

A Trustee Agency is a state agency that has jurisdiction by law over natural resources affected by a project that are held in trust for the people of the State of California.

PRC Section 21070. The CEQA Guidelines define a Trustee Agency to include:

- (a) The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department;

- (b) The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands;
- (c) The State Department of Parks and Recreation with regard to units of the State Park System;
- (d) The University of California with regard to sites within the Natural Land and Water Reserves System.

However, this list of Trustee Agencies is not exhaustive. Many other agencies have trustee agency responsibilities, including the State and Regional Water Boards, Air Districts, the California Environmental Protection Agency, as well as CAL FIRE.

Many agencies are aware of CAL FIRE's responsibilities for permitting timber harvesting and timberland conversion and consult with CAL FIRE as a Responsible Agency; however, few consider CAL FIRE's responsibilities for protection of watersheds, wildlands, forestland, etc. and the programs CAL FIRE routinely administers in those areas, such as Vegetation Management, Forest Improvement, and Fire Protection. Land use decisions are routinely made that result in the conversion of forestland and interfere with CAL FIRE's ability to fight fire and treat fuels. Consequently, there is an increase in GHG emissions and loss of carbon sequestration capacity.

CAL FIRE's authorities under PRC Sections 713, 714, 4111 through 4446, and 4511 through 4628 are not dissimilar to the responsibilities of the other Trustee Agencies – namely protecting the environment. In protecting and maintaining the wildland, watershed and forest resources of the State, CAL FIRE is clearly acting as a Trustee Agency. The definition of Trustee Agency in the CEQA Guidelines needs to be amended to ensure that lead agencies consult with CAL FIRE when the resources it protects and maintains are potentially impacted.

CAL FIRE recommends amending the Trustee Agency (14 CCR 15386) definition to read:

- (e) The Department of Forestry and Fire Protection (Department) with regard to the State's forestland, rangeland and wildland resources that are held in trust for the people of the state by and through the Department's responsibilities found in PRC Sections 713, 714, 4111 through 4446, and 4511 through 4628.

Miscellaneous Comments

Amend Section 15126 (c)(3) as follows:

- (3) Off-site measures, including offsets, or activities to avoid emissions as project mitigation. ~~to mitigate a project's emissions;~~

Add to Subsection (c)(6) to Section 15126.4; "Mitigation Measures Related Greenhouse Gas Emissions", p 14.

(6) Measures that utilize materials, such as forest wood waste, for carbon neutral alternative energy generation that would have otherwise produced emissions.

Add to Appendix B: Statutory Authority of State Departments

- CAL FIRE as having statutory authority for:
 - "Flood plains and watersheds" (#8 in matrix)(w/regard to protecting watersheds in State Responsibility Areas)
 - "Parks, forests, trees and outdoor recreation areas" (#19 in matrix)(w/regard to forestland, timberland, urban forests);
 - "Statewide land use patterns" (#35 in matrix) (w/regard to timberland conversion, TPZ, rezoning).

Concern with Section 15064.4 – "Determining the Significance of Impacts from Greenhouse Gas Emissions":

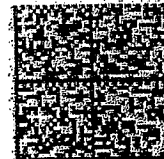
Subsection (b) provides guidance that will be difficult to apply within the Forest Sector. This subsection requires that mitigations at the project level must include specific requirements that reduce or mitigate the project's incremental contribution to Greenhouse Gas emissions. In biological sectors such as forestry, a project may well reduce the carbon stocks for a period of time while in the long run actually result in a statewide increase in carbon storage. Harvesting a stand of trees may reduce the short term carbon stocks, yet the remaining trees may actually have more carbon storage potential in the long run. The harvest may improve the spacing of the remaining trees allowing them to grow larger quicker and may increase the resilience of the stand to wildfire. Both of these outcomes are GHG beneficial over the long term but do create a short term reduction in carbon stocks. The existing wording of the section appears to make it difficult to approve a project with short term impacts but long term benefits. We do not have a good solution identified but would appreciate the opportunity to work with staff to find an appropriate amendment to the language.

CAL FIRE appreciates having had the opportunity to review and comment on the draft amendments to the CEQA Guidelines. If you have any questions, please do not hesitate to contact Allen Robertson, Deputy Chief, Environmental Protection, Sacramento, at 916-657-0300.

Sincerely,



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Director



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